(1) Supreme Court, U.S.
FILED

031358 FEB 12 2004

OFFICE OF THE CLERK

No. 03 -

In The

Supreme Court of the United States

Tod N. Rockefeller
Petitioner,
v.
Deanell Tacha, Chief Judge,
United States Court of Appeals
for the Tenth Circuit, et al.,
Respondents.

On Appeal to the United States Court of Appeals for the District of Columbia Circuit

---

PETITION FOR WRIT OF CERTIORARI

Tod N. Rockefeller, pro se
319 Sunnyview St.
Carlsbad, NM 88220
(505) 628 - 3541

Heather Graham-Oliver, Ass't U.S. Attorney
U.S. DOJ, Judiciary Cntr. Bldg., Rm. 10-911
555 Fourth Street, N.W.
Washington, DC 20530
(202) 307 - 0492

END

Preface Statement

Petitioner had filed a Petition for Rehearing En Banc with the DC Circuit. Such Petition detailed that the grounds used for the dismissal of Petitioner's appeal [03-5076], should no longer apply when subject to the pleadings within the Petition.

Question Presented

1. Whether this Court will determine that Petitioner's claim for injunctive relief was well-founded and meritorious ?

Parties Proceeding

Petitioner was plaintiff (01-2627 RBW) in the DC District Court, and subsequently Appellant to the U.S. CoA for the DC Cir. (03-5076).
Respondents are Tacha, 10th Cir. Chief Judge, and Circuit Judges Baldock, Brorby, and Kelly.

Respondents are judges who dismissed Petitioner's 10th Cir. cases [00-2480; 01-2054].
Respondents' contact is through their counsel:

Heather Graham-Oliver, Asst. U.S. Attorney
U.S. DOJ Judiciary Center Bldg., Rm. 10–911
555 Fourth Street, N.W.; Wash., D.C. 20530
(202) 307 - 0492

Table of Contents

Question Presented	i
Parties to Proceeding	ii
Table of Authorities	iii
Rules /Jurisdiction	iii
Constitutional Provisions at Issue	1
Statement of the Case	1
Argument	2 thru 4
Appendix 1	A-1
Appendix 2	A-2 thru A-3
Appendix 3	A-4 thru A-13

Table of Authorities

CONSTITUTIONAL PROVISIONS

U.S. Const., Amend. I
U.S. Const., Amend. V
U.S. Const., Amend. VII

STATUTES

15 U.S.C. § 2622 (a)
28 U.S.C. § 1254 (1)
42 U.S.C. §§ 300j-9(i), 6971, 9610(a)
42 U.S.C. §§ 2000e-1 through 2000e-17

CASES

Pulliam v. Allen, 466 U.S. 522, 528, 537, 541 (1984);
Forrester v. White, 484 U.S. 219, 228-29 (1988);
Hewitt v. Helms, 482 U.S. 755, 766 (1987);
Mireles v. Waco, 502 U.S. 9, 10 n.1 (1991);
In re Justices of Supreme Court of Puerto Rico, 696 F.2d 17 (1st Cir.1982);
Heimbach v. Lyons, 597 F.2d 344 (2nd Cir. 1979);
Slavin v. Curry, 574 F.2d 1256 (5th Cir.1978);
WXYZ, Inc. v. Hand, 658 F.2d 420 (6th Cir.1981);
Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979);
Richardson v. Koshiba, 693 F.2d 911 (9th Cir. 1982).

Rules

Supreme Court ("Sup.Ct.") Rules 10(a), 10(c), 14.1

Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1). The U.S. CoA for the DC Cir. denied Petitioner's Petition for Rehearing En Banc (03-5076) with an Order filed on NOV 17, 2003.

Constitutional Provisions at Issue

First Amendment Right of Free Speech
Fifth Amendment Right of Due Process of Law
Seventh Amendment Right of Trial by Jury

Statement of the Case

This case involves retaliations taken upon Petitioner by a former manager of his employer at the time, the United States ("U.S.") Department of Energy ("DOE "). Petitioner is a disabled individual who was employed with the DOE as an Environmental Scientist at the Waste Isolation Pilot Plant ("WIPP ") in Southeastern New Mexico. The WIPP is a nuclear waste repository for the disposal of defense program generated transuranic waste. Petitioner is simply just an honest man.

When Petitioner began making attempts to identify and correct safety deficiencies, the former DOE manager of the WIPP engaged in reprisals towards Petitioner. The retaliations against Petitioner culminated in his removal from federal service during December of 1997 for putative "poor performance".

Subsequent to his removal, Petitioner filed complaints in the U.S. district court for the district of New Mexico, and then appeals with the 10th Circuit. These courts had not addressed the pleadings of Petitioner. E.g.: 748 pages of evidence filed. Petitioner next filed Petition 01-1143 with this Court. After Petition 01-1143 was denied, Petitioner filed a complaint in the DC district court,which was dismissed on the ground, for example, that the 10th Cir. judges were immune from suit. The DC Cir. affirmed the dismissal of the com- plaint. A Petition for Rehearing En Banc (hence- forth "Rehearing") with the DC Cir., requesting only injunctive relief, was filed which is included with, and is the basis of, this instant Petition.

Argument

Question 1.

The original Order (henceforth "8/12 Order") of the DC Cir. dismissing Petitioner's appeal [03-5076] is included below as Appendix 2. There are three issues identified within the 8/12 Order that the DC Cir. used as grounds for the dismissal of 03-5076 which are: 1) "judicial immunity"; 2) "failure to state a claim under Title VII"; and 3) "lack of a private cause of action under 18 U.S.C. §§ 242, 371." App. 2 at A-2, A-3.

To address the ground concerning "18 U.S.C. §§ 242, 371" originally, for example, Petitioner had pointed out that the cases accepted by the lower courts to support their position on this issue were not valid. Petitioner had made this claim because, the cases cited by Appellees [E.g.: *Dugar v. Coughlin*, 613 F.Supp. 849, 852 n.1 (S.D. Ohio 1985)] to support their claim towards 18 U.S.C. §§ 242, 371, did not employ the precedent set by this Court [four-part test within *Cort v. Ash*, 422 U.S. 66, 78 (1975)]. According to this precedent, a court would apply the *Cort* test for determining if there was an implied cause of action within a statute, including those that are criminal.

While Petitioner is of the opinion that he made a very valid point concerning the application of the *Cort* test precedent, this point is moot. All of the grounds specified above for the dismissal of 03-5076 are rendered inapplicable to Petitioner's case if the facts and grounds within his Rehearing are considered. E.g.: The silence of the DOE towards Petition 01-1143 constitutes an adoptive admission of pretext per Fed.R.Evid. 801(d)(2)(B). See *United States v. Andrus*, 775 F.2d 825, 839-40 (7th Cir. 1985); see also page A-10 below. The established pretext relates to the fact that

Petitioner's claim for injunctive relief is meritorious.

Petitioner had learned of another precedent set by this Court, applicable to this case, during the process of his research towards defense against dismissal. In the *Pulliam* case, this Court ruled that judicial immunity did not bar injunctive relief. In comparing the ruling in *Pulliam* to the Administrative Procedures Act, 5 U.S.C. § 701 et seq., Petitioner found that both coincide with allowing injunctive relief while not allowing damages. In filing his requested Rehearing with the DC Cir., Petitioner had respectfully apologized to the court for his previous lack of knowledge in the area of injunctive relief. The entitlement to injunctive relief and irreparable harm suffered in the absence of such relief towards Petitioner are outlined below. See App. 3 at A-6 through A-11.

Conclusion

Are not the rulings of this Court for the purpose of demonstrating the intentions and designs behind the law, to ensure the most uniform and just application of such ? Was this Court's ruling in *Pullium* towards injunctive relief based, in part, upon the Administrative Procedures Act ? It is hoped that the merits of this case have been adequately demonstrated by Petitioner to this Court. Might such case become an example of when relevant facts and case law are effectively presented to this Court, that justice prevails within the greatest democracy in the world . . . the United States ?

Prayer for Relief

What the lower courts were misled into believing about Petitioner, to justify the dismissal of his complaints, by the tyrannical DOE manager of the WIPP at the time, has now been admitted to have been untrue. This has resulted in harmful error towards Petitioner. Petitioner prays that this Court grant this instant Petition, and find that his request for injunctive relief has merit.

Respectfully submitted,

s/Tod N. Rockefeller
319 Sunnyview St.
Carlsbad, NM 88220
(505) 628 - 3541

APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5076 September Term, 2003
01cv02627

TOD N. ROCKEFELLER,
Appellant,
v.

Filed On:
NOV 17 2003

DEANELL TACHA, Chief Judge, United States Court of Appeals for the Tenth Circuit, et al.,
Appellees.

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, and Roberts, Circuit Judges.

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: s/Michael C. McGrail
Deputy Clerk

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5076 September Term, 2002
01cv02627

Tod N. Rockefeller, Former,
Environmental Scientist,
United States Depart. of Energy,
Appellant,

v.

DEANELL TACHA, Chief
Judge, United States Court
of Appeals for the Tenth
Circuit, et al.,
Appellees.

Filed On:
AUG 12 2003

BEFORE: Ginsburg, Chief Judge, and Sentelle, and Henderson, Circuit Judges.

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987)(per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam). The district court properly dismissed appellant's complaint on the grounds of judicial immunity, see Forrester v. White, 484 U.S. 219, 225 (1988); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978); failure to state a claim under

Title VII because of the lack of employment relationship between appellant and appellees; and the lack of a private right of action under 18 U.S.C. §§ 242, 371.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until after seven days after the resolution of any timely petition for rehearing en banc. See Fed.R.App.P. 41(b); D.C. Cir. Rule 41.

Per Curiam

s/Ginsberg, Sentelle, Henderson [Initials]

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

TOD N. ROCKEFELLER, former ENVIRONMENTAL SCIENTIST, WIPP SITE TEAM, CARLSBAD AREA OFFICE, UNITED STATES DEPART. OF ENERGY, Plaintiff / Petitioner - Appellant	**Case No. 03 - 5076**
v.	**Sup.Ct. Pet. 01-1143**
U. S. COURT OF APPEALS FOR THE TENTH CIRCUIT JUDGES: TACHA, Chief Judge, BALDOCK, BRORBY, and KELLY, Circuit Judges, Defen. / Respondents - Appellees.	**10th Circuit Nos. 00-2480; 01-2054**
	USDC - DC No. 01- 2627 RBW
	USDC-NM Nos. 99-1059; 00-652

Petition for Rehearing by the Panel and Petition for Rehearing En Banc

---

I. Introduction

Appeal No. 03-5076 was dismissed by this Court with an Order filed on 8/12/03. Petitioner-Appellant is filing a combined pleading as captioned above. See DC Cir. HdBk at 57. Petitioner was a Physical Scientist [GS 1301-13] at the United States ("U.S.") Department of Energy's ("DOE's") Waste Isolation Pilot Plant ("WIPP") , which is a repository for defense program generated transuranic nuclear waste. Petitioner is simply just an honest scientist who was trying to take preventative measures to preclude the possibility of safety deficiencies from turning into disasters, which could be very damaging

to our nation. The DOE had removed Petitioner from federal service during December of 1997 for putative "poor performance". In response to his removal, Petitioner filed complaints in the USDC, appeals in the Tenth Circuit, (as captioned above) and then a Petition for Writ of Certiorari in the Supreme Court ("Sup.Ct.") No. 01-1143. After exhausting all of his avenues of administrative relief [Petition 01-1143], Petitioner filed Complaint No. 01-2627 RBW in the DC district court.

As a result of the proceeding concerning Sup.Ct. Petition 01-1143 [Encl. I to doc. 7 of 01-2627 RBW], Petitioner has established as fact a number of violations of the laws and Constitution of the U.S. by the DOE and the 10th Cir. that will be detailed below. Complaint 01-2627, that was the subject of the appeal in this Court [03-5076], demanded damages in dollars from the Judicial Branch. Petitioner has recently learned that a demand for damages in case 01-2627 is inappropriate as will also be explained below. Injunctive relief only, is what Petitioner can appropriately request from this Court in an Official-capacity suit. See doc. 7 and Amended Complaint. The panel decision in question is attached as "Addendum I".

II. The Constitution of the U.S.

Since the beginning of our nation, the Bill of Rights did not apply to all Americans. E.g.: African-Americans. During the late 1860s, enough of the nation became aware of the plight of African-Americans at the hands of the Klu Klux Klan, and others, to force the Legislature to take action. In response to the crisis above, the Klu Klux Klan Act was enacted [also known as the Civil Rights Enforcement Act of 1871]. Unfortunately, however, for African-Americans, said Act above was essentially ineffectual. It had to take nearly another 100 years, with the enactment of the Civil Rights Act of 1964,

for enforcement of civil rights, for truly all Americans, to become a reality within our nation.

This instant Petition presents a very important issue concerning the democracy of this nation. The question is whether or not enforcement of the Bill of Rights is currently available for all Americans within the present day judicial system of the U.S. ? Is it true that if a law exists, but it is unenforceable, that said law is then without any value and meaningless ? Petitioner was formerly very proud to be a federal employee within the Defense Logistics Agency, especially during "Operation Desert Shield" and "Operation Desert Storm". Petitioner prays that this Court will restore his faith and pride in the Government of this nation by granting this instant Petition for the justifications set forth below.

III. DC Circuit Panels - Injunctive Relief

Panels of this Court have ruled that there are four requirements that must be satisfied for a litigant to be entitled to a grant of injunctive relief. These requirements are:

> "(1) that he is substantially likely to succeed on the merits of the suit, (2) that in the absence of an injunction, he would suffer irreparable harm for which there is no adequate legal remedy, (3) that the injunction would not substantially harm other parties, and (4) that the injunction would not significantly harm the public interest."

See *Wagner v. Taylor*, 836 F.2d 566, 576 (D.C. Cir. 1987); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); see also *Tenacre Foundation v. INS*, No. 95-5294 (D.C. Cir., March 19th, 1996). Concerning injunctive relief, the Sup.Ct. has stated the following:

> "Under the Court of Appeals' remand order, the District Court could, and probably should, have entered judgment granting the requested declaratory and injunctive relief. Instead, the District Court first took up the question of immunity, and, upon finding qualified immunity, precipitately issued an order closing the case. No order was entered disposing of respondent's pending claims for equitable relief."

See *Hewitt v. Helms*, 482 U.S. 755, 766-67 (1987) (Marshall, J., dissenting). Concerning Appeal No. 03-5076 with this Court, the same is true as quoted from the *Hewitt* case above. After this Court found Defendants immune, an order was filed on 8/12/03 "closing the case", without "disposing" of Petitioner's "pending claims for equitable relief" [remand back to Trial Court as injunctive relief while allowing no damages].

In addition, Appeal No. 03-5076's claim for equitable relief was ripe for a judicial decision. A panel of this Court ruled the following:

> "The two-pronged test for ripeness established by the Supreme Court in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967), requires the court to consider both the "fitness" of the issues for judicial decision and the "hardship" to the parties of withholding review. "Purely legal questions," such as those presented in the instant case, are "presumptively [fit] for judicial review." *City of Houston v. HUD*, 24 F.3d 1421, 1431 (D.C. Cir. 1994)(quoting *Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 92 (D.C. Cir. 1986)."

See *Chamber of Commerce of the U.S., et al. v. Reich*, No. 95-5135 (D.C. Cir., June 21st, 1995).

As will be demonstrated below, Petitioner's Appeal [03-5076] met the four "requirements" that panels of this Court have ruled which entitled him to injunctive relief, and that Petitioner's pending claims for equitable relief were indeed ripe for a judicial decision.

IV. Judicial Immunity - Injunctive Relief / Damages

The Sup.Ct. and six different U.S. Circuit Courts have all ruled that judicial immunity does not bar injunctive relief. These cases include:

a. *Pulliam v. Allen*, 466 U.S. 522, 528, 537, 541 (1984);
b. *Forrester v. White*, 484 U.S. 219, 228-29 (1988);
c. *Hewitt v. Helms*, 482 U.S. 755, 766 (1987);
d. *Mireles v. Waco*, 502 U.S. 9, 10 n.1 (1991);
e. *In re Justices of Supreme Court of Puerto Rico*, 696 F.2d 17 (1st Cir. 1982);
f. *Heimbach v. Lyons*, 597 F.2d 344 (2nd Cir. 1979);
g. *Slavin v. Curry*, 574 F.2d 1256 (5th Cir. 1978);
h. *WXYZ, Inc. v. Hand*, 658 F.2d 420 (6th Cir. 1981);
i. *Harris v. Harvey*, 605 F.2d 330 (7th Cir. 1979);
j. *Richardson v. Koshiba*, 693 F.2d 911 (9th Cir. 1982).

As a result of all of the judgments above, Petitioner should have been granted a remand of his original New Mexico district court cases [99-1059 & 00-652] back to Trial Court as injunctive equitable relief that had been requested from Defendants [10th Cir. Appeal Nos. 00-2480 & 01-2054]. This request for equitable relief has been established as meritorious from the admissions-by-silence of the DOE concerning Sup.Ct. Petition 01-1143 that will be demonstrated below.

The ruling of this Court that Defendant judges are immune from suit now does not matter concerning Petitioner's Appeal [03-5076]. Judicial immunity is not being challenged any longer by Petitioner-Appellant. No damages in dollars can therefore be demanded, only injunctive relief. Petitioner came to this conclusion after studying both the Sup.Ct. ruling in *Pulliam*, and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701 et seq.. For a 42 U.S.C. § 1983 complaint reviewing an agency action under the APA, no damages are allowed only injunctive relief. See 5 U.S.C. § 702. The requirement noted above of the APA coincides with the ruling in *Pulliam* concerning § 1983 claims against a member of the judiciary [no damages allowed only injunctive relief]. For this reason, Petitioner realized that only injunctive relief is available to him, no damages. Petitioner respectfully apologizes to this Court for his lack of knowledge of the law in this regard.

V. Entitlement to Injunctive Relief

a. Meritorious Claims of Petitioner - as described above, Petitioner had filed Petition No. 01-1143 with the Sup.Ct.. Within said Petition, it is specifically outlined how facts concerning the DOE and the removal of Petitioner from federal service amounted to pretext for his termination. Also, that the DOE had made several knowingly false representations concerning Petitioner's Equal Employment Opportunity ("EEO") Complaints investigation. See doc. 7 at 4 through 7, and doc. 7's Enclosure I at A-31 through A-46 [Petition 01-1143]. The DOE had remained silent concerning the allegations within Petition 01-1143 and had admitted to them by the well-established doctrine of admission-by-silence. The 9th Cir. has ruled that:

"The general rule concerning admissions-

> **by-silence or acquiescence is well established.** When an accusatory statement is made in the defendant's presence and hearing, and he understands and has the opportunity to deny it, the statement and his failure to deny are admissible against him."

See *United States v. Moore*, 522 F.2d 1068, 1075 (9th Cir. 1975); see also *Arpan v. United States*, 260 F.2d 649, 655-57 (8th Cir. 1958); *Commonwealth v. Kruah*, No. 97-P-2164 (Mass. App. Ct., July 21st, 1999); *Commonwealth v. MacKenzie*, 413 Mass. 498, 506 (1992); *Commonwealth v. Olszewski*, 416 Mass. 707, 718 (1993), cert. denied, 513 U.S. 835 (1994); *Fletcher v. Weir*, 455 U.S. 603, 607 (1982); *Jenkins v. Anderson*, 447 U.S. 231, 238-40 (1980); *Osborne v. United States*, 371 F.2d 913, 921 (9th Cir. 1967); *United States v. Andrus*, 775 F.2d 825, 839-40 (7th Cir.1985); *United States v. Aponte*, 31 F.3d 86, 87 (2nd Cir. 1994); *United States v. Flecha*, 539 F.2d 874, 877 (2nd Cir. 1976); *United States v. Giese*, 597 F.2d 1170, 1195-96 (9th Cir. 1979);*United States v. Oplinger*, 150 F.3d 1061, 1072 (9th Cir. 1998); *United States v. Schaff*, 948 F.2d 501, 505 (9th Cir. 1991); *United States v. Zanabria*, 74 F.3d 590, 593 (5th Cir. 1996); *Wiedemann v. Walpole*, 2 Q.B. 534, 539 (1891).

Defendants had also violated the due process rights of Petitioner by affirming the district court's improper exclusion of 748 pages of relevant admissible evidence that had been filed. A number of additional violations were suffered by Petitioner. See doc. 7's Encl. I at A-31 through A-46. Petitioner most certainly was likely to succeed on the merits of his 10th Cir. Appeals [00-2480 & 01-2054]. Petitioner has indeed suffered from due process violations of Defendants. The Sup.Ct. has ruled that a court is supposed to be forbidden to violate a party's due process rights. See *Davis v. Passman*, 442 U.S. 228, 234 (1979).

b. In the Absence of an Injunction - if this remains so, Petitioner will suffer irreparable harm. Petitioner's career has been killed by the DOE. Employment was sought by Petitioner

with numerous employers which did not result even with just being interviewed. All of Petitioner's employment applications had been denied. In addition, the DOE has admitted to blacklisting Petitioner at the Carlsbad Environmental Monitoring and Research Center ("CEMRC"). Petitioner had applied for a position at CEMRC [a facility that is partially funded by the DOE]. As noted above, Petitioner did not even get an interview with CEMRC despite his directly related graduate degree and years of very relevant experience. E.g.: Petitioner was an Atmospheric Research Scientist at the DOE's Environmental Measurements Laboratory ("EML") in New York City. **At EML, Petitioner had been working on the characterization of air masses to aid in the ability to predict global climate change.** Rather than hire Petitioner, CEMRC hired a Mr. Jeremy Staley who had NO college degree or relevant experience (emphasis added). This was specifically outlined within Petition 01-1143 at A-42. The DOE has admitted-by-silence to the blacklisting of Petitioner.

Petitioner had worked very hard at developing a career with quite a few years of taking his college classes at night, while working full-time during the day to pay for his education himself. All of the career aspirations of Petitioner have been destroyed by the DOE. Petitioner was never a poor performer as the DOE has now admitted to. Petitioner has no training in regard to the law, yet he has successfully docketed four petitions with the Sup.Ct.. This fact alone would very likely prevent any jury from finding that Petitioner had ever been a poor performer [the claim the DOE used to remove Petitioner from federal service]. Petitioner never had any desire to be criticizing the Government and battling the DOE in court. A humble prayer is made by Petitioner for this Court to show him justice done.

c. An Injunction's Harm to Defendants or the Public - if this Court grants this instant Petition, and then subsequently grants the injunctive relief that is sought noted above [remand back to Trial Court], no harm will come to the 10th Cir. Defendants. No damages can be sought towards the Defendants as outlined

above. All Petitioner wants to have vindicated is his Seventh Amendment right to a fair jury trial towards the DOE. Injunctive relief as such would certainly be of no harm to the public, but would actually be of value by affirming the strength of the Bill of Rights.

VI.. Conclusion

This Court's 8/12/03 Order dismissing Appeal No. 03-5076 details three justifications. The first is the "judicial immunity" of Defendants, the second is "failure to state a claim under Title VII", and third is "the lack of a private right of action under 18 U.S.C. §§ 242, 371." Since Petitioner has outlined that he can only seek injunctive relief and no damages against Defendants, these justifications for the dismissal of this Appeal [03-5076] are moot as detailed above. Petitioner has demonstrated, within this instant Petition, that there are well-founded justifications for granting him the injunctive relief that he seeks. In additional support, the Sup.Ct. has ruled that:

> "Indeed, this Court has already settled that a cause of action may be implied directly under the equal protection component of the Due Process Clause of the Fifth Amendment in favor of those who seek to enforce this constitutional right.

See *Davis*, 442 U.S. at 242. Petitioner prays that this Court "enforce this constitutional right".

Prayer for Relief

Petitioner prays that this Court issues an order granting this instant Petition for the justifications outlined above. Such an order would be a very large step towards vindicating Petitioner's constitutional rights and restoring faith in his government.

Respectfully submitted,

s/Tod N. Rockefeller, pro se
319 Sunnyview St.
Carlsbad, NM 88220
(505) 628 - 3541

Dated & Served: September 25th, 2003